

CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance and Litigation

Biweekly Report—Period Ending January 16, 1999

Charles E. Smith Real Estate Services, L.P., et al. v. DoC, et al. —(E.D. Va.) CV 98-1837-A

The U.S. Magistrate assigned to hear preliminary discovery issues in this suit (for PTO's office space consolidation procurement) filed by PTO's present landlord, has denied the plaintiff's motion for expedited discovery. The U.S. Attorney's office has filed a motion to limit discovery to the administrative record and will also be filing a motion for summary judgment on the merits. The procurement is being conducted by GSA. The suit alleges various violations of the Competition in Contracting Act (41 U.S.C. §253a) and the Public Buildings Act, (40 U.S.C. §606(e)). (Lisa J. Obayashi)

***Psychrometrics, Inc. v. DOC* GSBGA No. 14736-COM**

After extensive negotiations, this NIST contract for repair to its cooling tower on the Gaithersburg campus has been settled. Appellant had appealed the contracting officer's final decision denying its claim for \$36,205.45 plus interest and attorney's fees. Appellant had claimed that the specifications were ambiguous concerning the requirement that all existing fill dirt had to be replaced. It alleged that its offer did not account for this additional work, and when the Government directed the Appellant to perform this work, it alleged that this constituted a constructive change. The Government's position was that even if the specifications were ambiguous, the Appellant was on actual notice; a fact that Appellant denies. The matter was settled for \$16,500 inclusive of interest and attorney's fees. (Ken Lechter)

Domain Names

On January 6, 1999, the Department issued a notice, in the CBD, of its intent to enter a sole source contract with the Internet Corporation for Assigned Names and Numbers for the performance of specific addressing and assignment functions currently performed under a contract between DARPA and U.S.C. The Department has received inquiries about the sole source award from some individuals also involved in the public comment process for the Statement of Policy. These complaints generally relate to public participation in the process and reflect some confusion about the contract process. Many of these complaints should be addressed when NTIA posts the RFP on the

NTIA website on January 20, 1999.

***Envirofit, Inc. v. DOC*, GSBGA No. 14743-COM**

This appeal arose out of an EASC contract for HVAC up-grade to the NMFS facility in Woods Hole. Appellant had been default terminated after partially completing the work, and the Government re-procured. Appellant filed a claim for \$61,226.09 representing the unpaid balance of the contract price together with a claim for a constructive change. It also claimed that the default termination should be converted to a termination for convenience as the delay in performance was caused by the Government. The Government transmitted a demand for payment of \$9,906.51 for damages due to Appellant's delay in performance. Appellant appealed this demand, and the two matters were consolidated. After taking the appellant's deposition and holding negotiations, the matter has been settled for \$7,942, which represents the amount remaining on the contract, after previous payments to the Appellant and payment in full to the reprocurement contractor. NIST has also agreed to convert the t/d to a t/c. (Ken Lechter)

CLD "Time to Complete"—4.1 Days

Actions by Contract Law Division during Period

	From 1/3/99	To 1/16/99
Bureau	Received	Completed
MBDA	1	1
NIST	1	1
NOAA	12	7
OIG	0	1
Total	14	10

**Contract Law Division—Client Workload
Period Ending 01/16/99**

